

**SOUTH BEND REDEVELOPMENT COMMISSION
CONTINUED REGULAR MEETING**

November 8, 2007

10:00 a.m.

Presiding: Marcia I. Jones, President

1308 County-City Building
South Bend, Indiana

**The November 2, 2007 Redevelopment
Commission meeting was reconvened
at 10:10 a.m.**

1. ROLL CALL

Members Present:

Ms. Marcia Jones, President
Mr. Karl King, Vice President
Mr. Greg Downes, Secretary
Mr. Hardie Blake, Jr.
Mr. Ken Peczkowski

Legal Counsel:

Mr. Shawn Peterson, Esq.

Redevelopment Staff:

Mr. Don Inks, Director
Mrs. Cheryl Phipps, Recording Secretary

Others Present:

Mr. Tom Price, Mayor's Office
Mr. Randy Rompola, Baker & Daniels
Ms. Mo Miller

2. OLD BUSINESS

A. Douglas Road Economic Development Area

- (1) Commission approval requested for
Resolution No. 2390 authorizing the
issuance of City of South Bend, Indiana,
Redevelopment District Tax Increment
Revenue Bonds of 2007. (Widening of
Douglas Road)**

Mr. Peterson explained that the city had an understanding with Holladay Corporation regarding the development of the Douglas Road area. We were going to do the road project; they were going to provide the security to enable us to market a bond to provide sufficient funds to complete the road. We've had a contract that was let for that and

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(1) continued...

we're ready to go on it. There's a form of development agreement on the agenda for approval which stipulates a timeline for the development. At 10:00 a.m. this morning Mr. Peterson received a call from counsel for Holladay informing him they are not willing to commit to doing development by 2011 as the development agreement stipulates. They don't want a timeline, and, once the development is constructed, they want to immediately be released from their guarantees in the document.

Because of the gap in property tax funding, for us to have sufficient revenues to make the bond payments, there has to be an assessment date and then wait until the payment is due, so we were willing to release the guarantee, but not until the funds are actually available. The second thing is they wanted a third party to be allowed to make an investment, not Holladay, and have it count toward their commitment. We were willing to agree as long as the area could accumulate an assessed value, but we can't take a representation from a third party as to its investment in a project. It has to be objective, based on the assessed value that the auditor puts on it, not what someone else says they spent on a project. They might construct a building worth \$500,000, but they put \$500,000 of soft costs in that isn't assessable. That isn't a million dollar project. Holladay was not willing to give on that.

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(1) continued...

Mr. Peczkowski noticed that the name had changed from Holladay Corporation to Douglas Road Partners LP. He asked if that was part of the negotiations.

Mr. Peterson responded that there are two entities: Douglas Road Partners, L.P. owns the Memorial Building and Douglas Road Retail Partners, L.P. would own the new development, mixed use retail. The Douglas Road Partners building has assets, so that was going to be the guarantee for the project. The bank wants that one on the hook. We want both of them because they are guaranteeing our money which is second in line. Holladay is fine with that aspect.

Mr. King asked if “our money” was the million dollars that the Council appropriated from the city General Fund (from Major Moves). Mr. Peterson confirmed that it was.

Mr. Peterson: The baffling part to me was, the reason we’re doing this road is to provide for development. We’re not here to make Holladay’s land more valuable. We want to see development. If they don’t have plans to develop what they said at the beginning of the conversation, what’s the point of the city taking on exposure? If Holladay walks away without doing the development the city has debt service payments that we can’t cover. That is a deal breaker from the city’s perspective.

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(1) continued...

Mr. Peczkowski asked who else is out there considering development? Is there anyone else? Mr. Peterson responded there is no one else who would put up a guarantee for the road. We created the development area to provide funding for the road to enhance Holladay's development. We would normally wait for taxes to come in from the Memorial development to provide a stable source of funding. Holladay asked if we could do the road earlier, and we said our only problem would be security. They promised to provide security to get the deal worked out. Now they seem to be backing out of the development.

Mr. King noted that in reading the agreement, he wasn't clear what recourse the Commission had if Holladay didn't do \$3.3M of development. Mr. Peterson responded that Holladay was guaranteeing the city debt. There are two debts: a bond issue which their current building has enough TIF revenue to meet the obligation on. It's built and assessed. We were willing to take that as security on the bond. What Holladay was doing was funding a letter of credit for the bond debt service reserve of \$110,000. We were taking the rest of the risk, saying with the TIF revenues projected to come in and the \$110,000 Letter of Credit there to be drawn on, we can take that risk. Then, the city has loaned itself the \$1M from Major Moves. Holladay was guaranteeing that repayment until they do development. The rationale is, if they do development, that

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(1) continued...

serves the purpose of the Major Moves money, as well as if they do development, we can project TIF revenues to come in and repay it. If they don't do development, then we lose that entire million dollars. The recourse if Holladay didn't do the development was to be that Holladay would pay the city an amount equal to the debt service payments on the Major Moves money---\$30,000 per year. Then, when the principal came up, they would have to pay that. What Holladay wanted was to be released from that obligation immediately upon their completion of their building. But that would leave the city with a debt service gap for two years, and no cash as security for the other bond. We would have a pure TIF bond that wouldn't be funded. It would need to be a policy decision whether city was willing to do that and risk the city's credit rating. Our security was having funds coming in to pay the bond off, or use it to pay back Major Moves.

Mr. Peczkowski asked how intertwined the agreement on the road widening was with Holladay's going ahead on the project? If the road isn't widened, are they not going to go ahead with their project? Is the road being widened of paramount interest to Holladay's development? Mr. Peterson responded that it's an incentive. They may still go ahead with their project. They've got options. I don't know if they wouldn't exercise them.

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(1) continued...

Mr. Peterson's recommendation was that the Commission approve the development agreement in form, hoping Holladay would change its mind. Approving the bond resolution and the appropriation resolution, knowing we can't close until we get that security.

Mr. King asked if the Commission approves the documents today and Holladay never does execute the agreement, whether any liability is triggered for the city? Mr. Peterson responded that, no, we just wouldn't issue the bond. Until you close, you don't have liability. We don't have any intention of closing until they come to our terms. The Commission could do a rescinding resolution at its next meeting.

Mr. King suggested the Commission make its position clear for the record so the staff can negotiate from a clear position.

Mr. Peterson noted that one change from what the Commission had prior to the meeting is that instead of using a reserve account, the flow of funds is to be replenished with cash excess if there's a draw on letter of credit rather than restoring the letter of credit, which means that, if there is a draw, a cash reserve would be built up before the developer is reimbursed for any payments made under the letter of credit.

Mr. Blake asked if the city has other projects it is working on with Holladay where there

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(1) continued...

are issues like on this one. Mr. Peterson responded that there are. This is very typical.

Mr. Blake asked if Holladay is aware that we're concerned about our credit ratings. He stated that Holladay's credit rating is going down, too, with the Commission.

Upon a motion by Mr. King, seconded by Mr. Downes and unanimously carried, the Commission approved Resolution No. 2390 authorizing the issuance of City of South Bend, Indiana, Redevelopment District Tax Increment Revenue Bonds of 2007. (Widening of Douglas Road)

COMMISSION APPROVED RESOLUTION NO. 2390 AUTHORIZING THE ISSUANCE OF CITY OF SOUTH BEND, INDIANA, REDEVELOPMENT DISTRICT TAX INCREMENT REVENUE BONDS OF 2007. (WIDENING OF DOUGLAS ROAD)

(2) **Public Hearing on Resolution No. 2391 appropriating the proceeds (including investment earnings thereon) of the Redevelopment District Tax Increment Revenue Bonds. (Widening of Douglas Road)**

Ms. Jones opened the public hearing for whoever wished to speak.. There was no one who wished to speak regarding Resolution No. 2391. Ms. Jones closed the public hearing for whatever action the Commission wished to take.

PUBLIC HEARING ON RESOLUTION NO. 2391

(3) **Commission approval requested for Resolution No. 2391.**

Upon a motion by Mr. King, seconded by Mr. Downes and unanimously carried, the Commission approved Resolution No. 2391 appropriating the proceeds (including investment earnings thereon) of the

COMMISSION APPROVED RESOLUTION NO. 2391 APPROPRIATING THE PROCEEDS (INCLUDING INVESTMENT EARNINGS THEREON) OF THE REDEVELOPMENT DISTRICT TAX INCREMENT REVENUE BONDS. (WIDENING OF DOUGLAS ROAD)

2. OLD BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(3) continued...

Redevelopment District Tax Increment
Revenue Bonds. (Widening of Douglas
Road)

3. NEW BUSINESS

A. Douglas Road Economic Development Area

(1) Commission approval requested for Engagement Letter from Baker & Daniels to serve as Bond Counsel for Issuance of TIF Revenue Bonds. (Widening of Douglas Road)

Mr. Inks noted that the Engagement Letter
proposes a fee of \$25,000 plus expenses.

Upon a motion by Mr. Downes, seconded by
Mr. Peczkowski and unanimously carried,
the Commission approved the Engagement
Letter from Baker & Daniels to serve as
Bond Counsel for Issuance of TIF Revenue
Bonds. (Widening of Douglas Road)

COMMISSION APPROVED THE ENGAGEMENT
LETTER FROM BAKER & DANIELS TO SERVE AS
BOND COUNSEL FOR ISSUANCE OF TIF
REVENUE BONDS. (WIDENING OF DOUGLAS
ROAD)

(2) Commission approval requested for Selection of Wells Fargo Bank, N.A. as Registrar Paying Agent. (Widening of Douglas Road)

Mr. Inks noted that Wells Fargo would
charge a \$400 acceptance fee, an \$400
annual administration fee and additional
expenses if it is necessary for disclosure,
dissemination or any out of pocket expenses.
Based on past history, we rarely see anything
other than the annual administration fee.

3. NEW BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(2) continued...

Upon a motion by Mr. Downes, seconded by Mr. Blake and unanimously carried, the Commission approved the Selection of Wells Fargo Bank, N.A. as Registrar Paying Agent. (Widening of Douglas Road)

COMMISSION APPROVED THE SELECTION OF WELLS FARGO BANK, N.A. AS REGISTRAR PAYING AGENT. (WIDENING OF DOUGLAS ROAD)

(3) Commission approval requested for financial consultant in the Douglas Road Economic Development Area. (Widening of Douglas Road)

Mr. Inks noted that Crowe Chizek's fee would be not to exceed \$15,000 plus out of pocket expenses.

Mr. King noted that he is a former partner of Crowe Chizek. He no longer has any ownership, no longer receives any compensation or have any financial interest whatever in Crowe Chizek. He is still on their health insurance plan, but pays his own premiums. He has no pecuniary interest in Crowe Chizek's involvement here, therefore may participate in discussion and vote on items related to them.

Mr. Peczkowski asked what the scope of services is for Crowe. Mr. Peterson responded that they prepare the TIF projection numbers and help set the debt service schedule to make sure we issue bonds that we can reasonably expect to pay for.

Upon a motion by Mr. Downes, seconded by Mr. Blake and unanimously carried, the Commission approved the request for proposal for financial consultant in the Douglas Road Economic Development Area

COMMISSION APPROVED THE REQUEST FOR PROPOSAL FOR FINANCIAL CONSULTANT IN THE DOUGLAS ROAD ECONOMIC DEVELOPMENT AREA AND ACCEPTED THE PROPOSAL FROM CROWE FOR THE SCOPE OF SERVICES AND FEE PROPOSED.

3. NEW BUSINESS (CONT.)

A. Douglas Road Economic Development Area

- (3) continued...
and accepted the proposal from Crowe for the scope of services and fee proposed.
- (4) **Commission approval requested for Project Agreement with the City of South Bend designating the Board of Public Works to act as the Commission's agent for the purposes of widening Douglas Road.**

Mr. Peterson noted that this item is no longer needed. These terms would be covered in the development agreement.

Item deleted.

- (5) **Commission approval requested for Development Agreement by and between the South Bend Redevelopment Commission, City of South Bend, Indiana, Douglas Road Retail Partners, L.P., and Douglas Road Partners, L.P.**

Mr. Peterson noted that Resolution No. 2394 would approve a form of Development Agreement and allows the officers to execute it when finalized.

Upon a motion by Mr. King, seconded by Mr. Downes and unanimously carried, the Commission approved Resolution No. 2394 approving a Development Agreement with Douglas Road Retail Partners L.P., Douglas Road Partners, L.P. and the City of South Bend, Indiana and other related matters, on the condition that any substantive changes to what the Commissioners have already seen

COMMISSION APPROVED RESOLUTION NO. 2394 APPROVING A DEVELOPMENT AGREEMENT WITH DOUGLAS ROAD RETAIL PARTNERS L.P., DOUGLAS ROAD PARTNERS, L.P. AND THE CITY OF SOUTH BEND, INDIANA AND OTHER RELATED MATTERS, ON THE CONDITION THAT ANY SUBSTANTIVE CHANGES TO WHAT THE COMMISSIONERS HAVE ALREADY SEEN WILL BE BROUGHT BACK TO THE COMMISSION FOR APPROVAL

3. NEW BUSINESS (CONT.)

A. Douglas Road Economic Development Area

(5) continued...

will be brought back to the Commission for approval.

8. NEXT COMMISSION MEETING

The next Regular Meeting of the Redevelopment Commission is scheduled for Friday, November 16, 2007 at 10:00 a.m.

NEXT COMMISSION MEETINGS


5. ADJOURNMENT

There being no further business to come before the Redevelopment Commission, Mr. King made a motion that the meeting be adjourned. Mr. Downes seconded the motion and the meeting was adjourned at 10:32 a.m.

ADJOURNMENT



Donald E. Inks, Director



Marcia I. Jones, President